Office - Supreme Court, U.S.
FILED
SEP 23 1982
CLERK

No. 81-2275

IN THE

Supreme Court of the United States

OCTOBER TERM 1981

JOHN C. CARDIN,

Petitioner,

v.

JOSEPH B. DE LA CRUZ, THE HON. CAROL BURGETT, SANDY WELLS, OLIVER MASON, HAZEL OBI, JAMES HARP, GUY MCMINES, EARL BALLER, WAREN SHALE, MAX HUDSON, LAWRENCE HALL, PHILIP MARTIN, GERALD ELLIS, THE BUSINESS COMMITTEE OF THE QUINAULT INDIAN NATION, THE QUINAULT TRIBAL COURT,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY OF PETITIONER JOHN C. CARDIN

Counsel for Petitioner:
James H. Davenport
Attorney at Law
115 D. Street, S.E.
Washington, D.C. 20003
(202) 547-7962

Of Counsel:
Bruce D. Berreth
Attorney at Law
2200 Westlake Ave.
Seattle, WA. 98121
(206) 623-7300

No. 81-2275

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1981

JOHN C. CARDIN,

Petitioner,

v.

JOSEPH B. DE LA CRUZ, THE HON. CAROL BURGETT, SANDY WELLS, OLIVER MASON HAZEL OBI, JAMES HARP, GUY MCMINES, EARL BALLER, WAREN SHALE, MAX HUDSON, LAWRENCE HALL, PHILIP MARTIN, GERALD ELLIS, THE BUSINESS COMMITTEE OF THE QUINAULT INDIAN NATION, THE QUINAULT TRIBAL COURT

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY OF PETITIONER JOHN C. CARDIN

Counsel for Petitioner:

James H. Davenport
Attorney at Law
115 D. St. S.E.
Washington, D.C. 20003
(202) 547-7962

Of Counsel:

Bruce D. Berreth
Attorney at Law
2200 Westlake Ave.
Seattle, WA 98121
(206) 623-7300

TABLE OF CONTENTS

Table of Contents	i
Table of Authorities	ii
THE COURT SHOULD NOT BE DIVERTED FROM THE REAL ISSUE OF THIS CASE	1
SECRETARY OF INTERIOR APPROVAL OF THE QUINAULT CONSTITUTION	3
THIS CASE IS NATIONALLY SIGNIFICANT	3
CONCLUSION	4

TABLE OF AUTHORITIES

Cases Cited

Merrion v. Jicarilla Apache Tribe, 50 U.S.L.W. 4169, No. 80-11 (January 25, 1982), 102 S. Ct. 894 (1982). 3

Montana v. United States, 450 U.S. 544, 67 L. Ed. 2d 293, 101 S. Ct. 1245 (1981). 2

Namen and State of Montana v. Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, Petition for Certiorari No. 82-22, (Confederated Salish and Kootenai Tribes v. Namen, 665 F. 2d 951 (9th Cir. 1982)). 4

Oliphant v. Suquamish Tribe, 435 U.S. 191, 55 L. Ed. 2d 209, 98 S. Ct. 1011 (1978). 2

Williams v. Lee, 358 U.S. 217, 3 L. Ed. 2d 251, 79 S. Ct. 269 (1959). 2

No. 81-2275

IN THE

SUPREME COURT OF THE UNITED STATES

JOHN C. CARDIN,

Petitioner,

v.

JOSEPH B. DE LA CRUZ, ET AL.,

Respondents.

REPLY OF PETITIONER JOHN C. CARDIN

THE COURT SHOULD NOT BE DIVERTED FROM THE REAL ISSUE OF THIS CASE.

Respondents have attempted (Response, Questions Presented 1, page i, and pages 2-7) to divert this Court's attention from the real issue of this case, i.e. whether or not non-Indians, who may not become members of a tribe because of their race, and who may not therefore participate in the formulation of tribal law, are to be subjected to the enforcement of that law by a tribal government and tribal court. (Petition, Questions Presented I and II, page i.)

The issue in this case is not whether the facts as found by a tribal court or alleged by tribal attorneys are correct or "uncontroverted," or whether Petitioner Cardin is a "bad" man, but rather which judge has the jurisdiction to determine the facts and enforce the law against non-Indians.

Some of Respondents' arguments are relevant to the real question at issue in this case, particularly at pages 16 and 17 of the Response. There, Respondents quote Governor Stevens, then Governor of the Territory of Washington, as stating that the Treaty of Olympia was entered so that the Quinaults would have a "permanent home where we can prevent bad white men from injuring you." Notice that Governor Stevens did not say "where you can prevent bad white men from injuring yourselves."

Respondents also cite Williams v. Lee, 358 U.S. 217 (1959). The proper reading of that case, in light of Oliphant v. Suquamish Tribe, 435 U.S. 191 (1978), and as construed by Montana v. United States, 450 U.S. 544 (1981), is at the nub of the issue in this case.

SECRETARY OF INTERIOR APPROVAL OF THE QUINAULT CONSTITUTION

Respondents assert that the Court should not now consider Petitioner Cardin's question whether an Indian tribe, whose constitution has not been approved by the Secretary of the Interior, has governmental or judicial power over non-Indians. (Response at Question Presented 2 and 3, page i, and pages 23-26.) This Court first raised that issue by identifying that Secretary of Interior approval of tribal constitutions was an incident of protection for non-Indians when tribal civil authority is necessary to protect tribal self-government or to control internal relations. That identification was first made in Merrion v. Jicarilla Apache Tribe, 50 U.S.L.W. 4169, on January 25, 1982, after this case had been argued to the Ninth Circuit Court of Appeals.

THIS CASE IS NATIONALLY SIGNIFICANT

This is clearly a case of national significance. Throughout the western United States, non-Indians reside within the territorial boundaries of Indian reservations. In Washington alone, there

are twenty-three such reservations. Whether those non-Indians will be subjected to full governmental and judicial power by Indians in Indian courts with no rights of review or appeal, or to state and federal court jurisdiction, is significant to many states, including those fifteen who have filed briefs of amicus in this case or in the Petition of Namen and State of Montana v. Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, et. al., No. 82-22, which presents the same question.

CONCLUSION

The Petition for Certiorari in this case should be granted.

Respectfully Submitted

James H. Davenport
Counsel for Petitioner

Bruce D. Berreth
Of Counsel